Supplemental Brief filed by David Donoghue, Trustee in this cause, has been referred to the Referee in Bankruptcy. Order directing the estate to be liquidated has in no manner affected the subject matter of the cause in this Honorable Court.

Petitioners agree that the Motion should be granted and David Donoghue substituted in his now capacity.

Since the Trustee in Bankruptcy has received his appointment as a Trustee in the liquidation proceeding, the Referee in Bankruptcy has appointed new and different counsel to represent the Trustee who prepared and filed the Supplemental Brief in his behalf. The Trustee was no doubt pressed for time in the preparation and the filing of the Supplemental Brief and, as will be pointed out, have overlooked certain phases of the record in making assertions relative to the title and possession of the oil in question. In order to correct the mistake we call the Court's attention to the following:

Respondent on Page 2 of his Supplemental Brief, in Paragraph 1 and again on Page 4, under "Contentions of this Respondent", Paragraph 1, sub-section 1, it is stated in substance that "The alleged illegal oil was in the actual possession of the Trinity Refining Company, Debtor, at the time of the filing of its Petition for Corporate Reorganization under the provisions of Section 77B of the Bankruptcy Act." Such is not the record but, on the contrary, the alleged illegal oil was in the custody and possession of the State Court Receivers, Bullock Hyder and J. C. Clopton, at the time of the filing of the Petition for Corporate Reorganization and so found to be in the State Court Receivers by the Trial Court in the Trial Court's findings of fact (R. 90), from which we quote in part:

> "Thereafter the State Court Receivers qualified by giving the necessary bond and taking the oath required, and on October 30, 1935 actually took charge of the properties and estates of Trinity Refining Company and the other defendants described in the Order of the

Court, and continued to hold said properties until the 18th day of December, 1935, when they were summarily dispossessed by David Donoghue, the Trustee appointed by this Court in the instant cause."

ARGUMENT.

Accordingly, it is submitted that the Debtor Corporation did not have unquestioned right and title to the oil involved at the time of the filing of the Reorganization Petition in the Bankruptcy Court, for the reason that the record discloses that all of the properties of the Debtor Corporation were in the possession of State Court Receivers and the only authority for the Bankruptcy Trustee's possession of the oil is the Order of the Bankruptcy Court directing that the State Court Receivers be dispossessed of the properties of the Debtor Corporation. When the State Court Receivers took charge of the properties of the Debtor Corporation in the State's Penalty Suit, Trinity Refining Company was then stripped of all right to possess or control its properties, and the State Court Receivers from the date of their appointment continued to exercise control over such properties until they were dispossessed by the Bankruptcy Trustee and when they were enjoined by the Bankruptcy Court from interfering in any manner with the possession of the same by its Trustee. It is therefore apparent that Respondent's contentions on Pages 4, 5, and 6 of the Supplemental Brief are without merit.

The Respondent seems to make much in his Supplemental Brief of the fact that no suit has been filed having for its purpose to obtain a judgment evidencing a confiscation of the oil in question. In response thereto we respectfully call the Court's attention to portions of the record, as follows:

On December 18, 1935, the Federal Court entered its Order and upon the same day that the Reorganization Petition was filed without notice or hearing appointing its Trustee (R. 29-30), and among other things entered the following injunction:

"And all other persons, firms, corporations, and all creditors of said Debtor, as well as each of their attorneys, agents and servants, and all sheriffs, marshals and other officers, deputies and employees be and they are hereby jointly and severally restrained and enjoined from removing, transferring or otherwise interfering with property, assets and effects of the above named Debtor, and from prosecuting, executing or suing out of any Court any process or attachment or other writ for the purpose of taking possession, impounding or interfering with any property, assets or effects of said Debtor, and from molesting, disturbing or interfering with the Trustee named and appointed herein and hereby in the discharge of his duties."

The Court's attention was timely directed to this situation in the filing of motions and pleas disclosed by the record, and thereafter on the 15th of January, 1936, the Court again entered its Order (R. 53, 54) enjoining all persons and attorneys, agents and servants, jointly and severally, from continuing the prosecution of any pending suits, and from "prosecution of any suit or suits or any cause of action upon any debt, claim or demand against the Debtor in any Court or Tribunal other than the Court in which this Petition for Reorganization is pending" and thereafter the State of Texas, through proper Motion (R. 73), advised the Court that the injunctions were in fact suits against the State of Texas inhibited by the Eleventh Amendment to the Constitution of the United States. Thereafter the United States District Court modified its Order in so far only as to permit the State of Texas to proceed with the trial of its Penalty Suit and the trial of its Tax Suit in the State Courts (R. 74, 75). This being the state of the record the Attorney General went back into the Federal Court, after having been advised by the State Court officially so to do and in order to make certain that the agencies of the State were not running counter to the injunctions then in effect through the Federal Court, by Motion (R. 75), requested by detailed pleading the right to institute its cause of action

against the oil in question for the State of Texas, setting up a description of the oil, the provisions of the confiscation law, pleading, the orders prohibiting production, transportation and handling of illegal oil in toto no attack was made on the Orders of the Commission and they have not been brought up. The State again tendered the record proof to the United States District Court, theretofore reduced to writing, and filed in the United States District Court evidencing the illegality of the oil. Upon a hearing of said motion to set aside the injunction and permit the State to file against the oil the Court without hearing any additional testimony entered its order (R. 86) releasing 69,900 barrels of the oil in a pit to the State, and refused to permit the State to file against approximately 78,000 barrels of oil described therein.

It is thus shown from the record in response to Respondent's contentions made in his Supplemental Brief that the oil was in possession of the State Court at the time of the filing of the Reorganization Proceedings in the Federal Court, and that the State has been throughout enjoined and restrained from instituting suit in a Court of competent jurisdiction to obtain judgment evidencing the confiscation of the oil.

WHEREFORE, Petitioners respectfully pray as in their Original Brief.

Respectfully submitted,

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